

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/02/2004

CORAM

THE HONOURABLE MR. JUSTICE P.D.DINAKARAN

W.P.No.4099 of 2000

K. Kanakarajan,
S/o. S. Kalimuthu,
No.16, Netaji Nagar,
Nanjundapuram Road,
Coimbatore 641 036. Petitioner

-Vs-

1. Union of India,
rep. by Secretary to
Government,
Ministry of Home Affairs,
North Block, New Delhi 110 011.

2. Director General,
Border Security Force,
Block No.10, C.G.O.Complex,
Lodhi Road P.O.
New Delhi 110 003.

3. The Commandant, 11 Bn. B.S.F.,
Nagaur Post,
Nagaur District,
Rajasthan. Respondents

Writ Petition, Under Article 226 of the Constitution of India,
praying for issuance of a Writ of Certiorarified Mandamus, as stated therein.

For Petitioner :: Mr. T.K.Ramkumar

For Respondents:: M/s. Kovi. Ramalingam
Addl.Central Govt.,Standing
Counsel

:O R D E R

By proceedings dated 23.12.1999, the third respondent rejected
the request of the petitioner for grant of pension on the ground that he has

put in only 14 years of qualifying service, whereas for grant of pension under the CCS Pension Rules, minimum 20 years of qualifying service is required.

2. Aggrieved by the said proceedings of the third respondent dated 23.12.1999, the petitioner has preferred the present writ petition for issuance of a Writ of Certiorarified Mandamus to call for the records and to quash the same and consequently, direct the respondents to grant pension to the petitioner with arrears from the date of retirement.

3. Mr. T.K.Ramkumar, learned counsel for the petitioner placing reliance on a decision of Kerala High Court made in O.P.No. 3867 of 1999 (SUBAIR.A ..VS.. DIRECTOR GENERAL) dated 18.08.1999 submits that in a similar matter, the Kerala High Court directed the respondents to disburse all the pensionary benefits with interest at 12% with effect from the date of resignation till the date of payment.

4. The question involved in the above writ petition is as to whether the petitioner, being a member of B.S.F, after serving nearly 14 years and 9 months from 21.04.1980 to 18.01.1995, which is admittedly less than 20 years, is entitled to pensionary benefits?

5. It is true that the Kerala High Court in an order dated 18.08.1999, made in O.P.No. 3867 of 1999 (SUBAIR.A ..VS.. DIRECTOR GENERAL) as well by another order dated 29.09.1999 in O.P.No.2920 of 1999 (CONT. MADHU ..Vs.. DIRECTOR GENERAL) has directed to disburse all the pensionary benefits with interest at 12% with effect from the date of resignation till date of payment within three months from the date of receipt of a copy of the said Judgment.

6. But, when a similar question, whether members of BSF who have resigned from their posts after serving for ten or more years, but less than 20 years are entitled to pension / pensionary benefits under the relevant provisions of the Border Security Force Act 1968, came up for consideration before the Apex Court in the case of UNION OF INDIA ..VS.. RAKESH KUMAR (A.I.R. 2001 S.C. 1877) and the Apex Court held as follows:-

"In our view, for grant of pension the members of BSF are governed by CCS (Pension) Rules. CCS (Pension) Rules nowhere provide that a person who has resigned before completing 20 years of service as provided in Rule 48-A is entitled to pensionary benefits. Rule 19 of the BSF Rules also does not make any provision for grant of pensionary benefits. It only provides that if a member of the force who resigns and to whom permission in writing is granted to resign then the authority granting such permission may reduce the pensionary benefits if he is eligible to get the pension. Therefore, by erroneous interpretation of the rules if pensionary benefits are granted to someone it would not mean that the said mistake should be perpetuated by direction of the court. It would be unjustifiable to submit that by appropriate writ, the Court should direct something which is contrary to the statutory rules. In such cases, there is no question of application of Article 14 of the Constitution. No person can claim any right on the basis of decision which is de hors the statutory rules nor there can be any estoppel. Further, in such cases, there cannot be any consideration on the ground of

hardship. If rules are not providing for grant of pensionary benefits, it is for the authority to decide and frame appropriate rules but Court cannot direct payment of pension on the ground of so-called hardship likely to be caused to a person who has resigned without completing qualifying service for getting pensionary benefits. As a normal rule, pensionary benefits are granted to a Government servant who is required to retire on his attaining the age of compulsory retirement except in those cases where there are special provisions".

7. It is not in dispute that the ratio laid down by the Apex Court in the case of UNION OF INDIA ..VS.. RAKESH KUMAR (A.I.R. 2001 S.C. 1877) referred to above is squarely applicable to the facts and circumstances of the present case.

8. Hence, finding no irregularity or illegality in the impugned order, rejecting the claim of the petitioner for pensionary benefits on the ground that he has not put in minimum period of 20 years of qualifying service, I do not find any justification to interfere with the impugned order.

9. In the result, the writ petition, which is devoid of merits is liable to be dismissed and the same is hereby dismissed. No costs.

Index: Yes

Internet: Yes

Dpn/

To:

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